A

SIOW CHUNG PENG

v.

PP

B

FEDERAL COURT, PUTRAJAYA
ZULKEFLI MAKINUDIN CJ (MALAYA)
ZAINUN ALI FCJ
JEFFREY TAN FCJ
MOHAMED APANDI ALI FCJ
C RAMLY ALI FCJ
[CRIMINAL APPEAL NO: 07-20-2013]
13 JANUARY 2014

CIVIL PROCEDURE: *Appeal - Appeal to Federal Court - Application*
D *for leave to file notice to appeal - Appeal of criminal matter emanating from subordinate court - Whether applicant had standing to make application - Whether application for leave known in law - Courts of Judicature Act 1964, s. 87(1)*

JURISDICTION: *Courts - High Court - Original criminal jurisdiction*
E *- Whether appeal could reach Federal Court via Court of Appeal only if criminal matter decided by High Court as trial court - Courts of Judicature Act 1964, s. 22*

This was the applicant's application for leave to file a notice of
F appeal to the court. The applicant was charged at the Sessions Court for an offence under s. 84(1) read together with s. 122C of the Securities Industry Act 1983. Before the commencement of the trial, the applicant filed a notice of motion at the High Court to strike out/quash/permanently stay the charge. The motion was
G dismissed by the High Court and the applicant appealed to the Court of Appeal. The Court of Appeal dismissed the appeal and the applicant subsequently lodged a notice of appeal against the decision. However, he was notified by the Registry that the notice of appeal could not be processed by reason of s. 87(1) of the
H Courts of Judicature Act 1964 ('CJA'). The prosecution submitted that the applicant had no standing to make the application to the Federal Court, as the matter originated from a subordinate court. The applicant, on the other hand, argued that the motion was first considered by the High Court who could not therefore have
I exercised appellate or revisionary jurisdiction, and that the motion could only be heard by the High Court, as only the High Court had the inherent jurisdiction to hear and dispose the motion.

Held (dismissing application)
Per Jeffrey Tan FCJ delivering the judgment of the court:

(1) The general proposition is that the subordinate courts do not have inherent jurisdiction to quash a charge or to acquit an accused on the charged preferred without hearing the evidence in support. Hence, procedure-wise, the motion to strike out/quash/permanently stay the charge was rightly instituted at the High Court who heard the motion at first instance. However, the original jurisdiction of the High Court is as stipulated in s. 22 of the CJA. Therefore, when 's. 22 of the CJA' was interpolated in place of 'in its original jurisdiction', s. 87(1) of the CJA reads as providing that the Federal Court shall have the jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court in pursuance of s. 22 of the CJA. (paras 7, 11 & 12)

(2) For the Federal Court to have jurisdiction to hear and determine an appeal from any decision of the Court of Appeal, two pre-conditions must be met: (i) the decision of the Court of Appeal was in its appellate jurisdiction in respect of the criminal matter; and (ii) the criminal matter was decided by the High Court in its original jurisdiction. Therefore, an appeal could only reach the Federal Court *via* the Court of Appeal, if the criminal matter was decided by the High Court as the trial court. In the instant case, the High Court was not the trial court and thus, could not have decided the criminal matter in pursuance of s. 22 of the CJA or in other words, in its original criminal jurisdiction. (para 13)

(3) Under the CJA, 'original criminal jurisdiction' is the jurisdiction to try offences, with s. 30 of the CJA as exception. The key words in s. 22(1) of the CJA are 'jurisdiction to try'. In the instant case, the jurisdiction to try the offence was entrusted to the Sessions Court. Since the High Court was not the trial court trying the offence and there was no provision to permit an appeal of a criminal matter that emanated from a subordinate court to the Federal Court, the application for leave to appeal, beside being unknown in law and so could not or never be granted in any event, was an absolute non-starter. (para 20)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah permohonan pemohon untuk kebenaran memfailkan notis rayuan ke mahkamah. Pemohon dituduh di Mahkamah Sesyen bagi satu kesalahan di bawah s. 84(1) dibaca bersama-sama dengan s. 122C Akta Perindustrian Sekuriti 1983. Sebelum permulaan perbicaraan, pemohon memfailkan notis usul di Mahkamah Tinggi untuk membatalkan/menggantung secara kekal pertuduhan tersebut. Usul tersebut ditolak oleh Mahkamah Tinggi dan pemohon merayu kepada Mahkamah Rayuan. Mahkamah Rayuan menolak rayuan tersebut dan pemohon kemudian memfailkan notis rayuan terhadap keputusan tersebut. Walau bagaimanapun, dia dimaklumkan oleh Pejabat Pendaftaran bahawa notis rayuan tidak boleh diproses disebabkan oleh s. 87(1) Akta Mahkamah Kehakiman 1964 ('AMK'). Pihak pendakwaan menghujahkan bahawa pemohon tidak boleh membuat permohonan tersebut ke Mahkamah Persekutuan kerana perkara tersebut bermula daripada mahkamah rendah. Pemohon, sebaliknya, menghujahkan bahawa usul tersebut mula-mula dipertimbangkan oleh Mahkamah Tinggi yang dengan itu, tidak boleh melaksanakan bidang kuasa rayuan atau semakan, dan bahawa usul hanya boleh dibicarakan oleh Mahkamah Tinggi, kerana hanya Mahkamah Tinggi mempunyai bidang kuasa sedia ada untuk membicarakan dan melupuskan usul.

Diputuskan (menolak permohonan)
Oleh Jeffrey Tan HMP menyampaikan penghakiman mahkamah:

(1) Proposisi am adalah bahawa mahkamah rendah tidak mempunyai bidang kuasa sedia ada untuk membatalkan pertuduhan atau melepaskan seseorang tertuduh atas pertuduhan yang dikenakan tanpa membicarakan keterangan sokongan. Oleh itu, berdasarkan prosedur, usul untuk membatalkan/menggantung secara kekal pertuduhan sebetulnya terletak pada Mahkamah Tinggi yang mula-mula membicarakan usul tersebut. Walau bagaimanapun, bidang kuasa asal Mahkamah Tinggi adalah seperti yang diperuntukkan dalam s. 22 AMK. Dengan itu, apabila 's. 22 AMK' disisipkan di tempat 'dalam bidang kuasa sedia adanya', s. 87(1) AMK dibaca sebagai memperuntukkan bahawa Mahkamah Persekutuan hendaklah mempunyai bidang kuasa untuk

mendengar dan memutuskan apa-apa rayuan terhadap apa-apa keputusan Mahkamah Rayuan dalam bidang kuasa rayuannya berkenaan dengan apa-apa perkara jenayah yang diputuskan oleh Mahkamah Tinggi berikutan s. 22 AMK.

(2) Untuk memberikan Mahkamah Persekutuan bidang kuasa untuk mendengar dan memutuskan sesuatu rayuan daripada apa-apa keputusan Mahkamah Rayuan, dua syarat awalan perlu dipenuhi: (i) keputusan Mahkamah Rayuan tersebut adalah dalam bidang kuasa rayuannya berkaitan dengan perkara jenayah; dan (ii) perkara jenayah tersebut diputuskan oleh Mahkamah Tinggi dalam bidang kuasa asalnya. Oleh demikian, sesuatu rayuan hanya boleh mencapai Mahkamah Persekutuan melalui Mahkamah Rayuan, jika perkara jenayah tersebut telah diputuskan oleh Mahkamah Tinggi sebagai mahkamah bicara. Dalam kes ini, Mahkamah Tinggi bukan mahkamah bicara dan dengan itu, tidak mungkin telah memutuskan perkara jenayah tersebut berikutan s. 22 AMK atau dalam perkataan lain, dalam bidang kuasa jenayahnya yang asal.

(3) Di bawah AMK, 'bidang kuasa jenayah asal' adalah bidang kuasa untuk membicarakan kesalahan-kesalahan, dengan s. 30 sebagai pengecualian. Kata-kata kunci dalam s. 22(1) AMK adalah 'bidang kuasa untuk membicarakan'. Dalam kes ini, bidang kuasa untuk membicarakan kesalahan tersebut diberikan kepada Mahkamah Sesyen. Oleh sebab Mahkamah Tinggi bukan mahkamah bicara yang membicarakan kesalahan dan tidak ada peruntukan untuk membenarkan rayuan bagi perkara jenayah yang bermula daripada mahkamah rendah kepada Mahkamah Persekutuan, permohonan untuk kebenaran merayu, selain daripada asing di sisi undang-undang dan dengan itu tidak boleh diberikan, secara mutlaknya tidak boleh dipertimbangkan.

Case(s) referred to:

Ang Cheng Hai & ors v. PP [1995] 3 SLR 201 ***(refd)***
Bachoo Mohan Singh v. PP [2010] 1 SLR 966 ***(refd)***
Dato' Mohamed Hashim Shamsuddin v. The Attorney-General, Hong Kong [1986] 1 CLJ 377; [1986] CLJ (Rep) 89 SC ***(refd)***
Karpal Singh & Anor v. PP [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183 SC ***(refd)***
Karpal Singh Ram Singh v. PP [2012] 5 CLJ 537 FC ***(refd)***
Microsoft Corporation v. SM Summit Holdings [2000] 2 SLR 137 ***(refd)***
Munawar Ahmad Anees v. PP [2010] 1 CLJ 802 FC ***(refd)***

A *Munusamy v. Subramaniam & Ors [1969] 1 LNS 112 HC* ***(refd)***
Ng Chye Huey v. PP [2007] 2 SLR 106 ***(refd)***
PP v. Lee Tin Bau [1984] 1 LNS 56 HC ***(refd)***
Sia Cheng Soon & Anor v. Tengku Ismail Tengku Ibrahim [2008] 5 CLJ 201 FC ***(refd)***
B *Tan Sri Eric Chia Eng Hock v. PP [2007] 1 CLJ 565 FC* ***(refd)***
Tengku Abdul Muiz Shah & Ors v. PP [1982] 1 LNS 91 HC ***(refd)***
Wong Kim Woon v. PP [1999] 2 CLJ 205 HC ***(refd)***

Legislation referred to:
Court of Judicature Act 1964, ss. 3, 22(1), 23, 24, 25, 30, 87(1)
C Securities Industry Act 1983, ss. 84(1), 122C

Criminal Procedure Code [Sing], s. 185
Supreme Court of Judicature Act [Sing], ss. 15, 29A(2)

For the appellant - Amer Hamzah Arshad; M/s Nizam Bashir & Amer Hamzah
D *For the prosecution - Awang Armadajaya Awang Mahmud; DPP*

Reported by S Barathi

E

JUDGMENT

Jeffrey Tan FCJ:

[1] On 13 January 2014, we unanimously dismissed the
F applicant's application (application) for leave to file a notice of appeal to this court. We now give our reasons.

[2] Briefly stated, the applicant was charged at the Kuala Lumpur Sessions Court for the following offence under s. 84(1)
G read together with s. 122C of the Securities Industry Act 1983:

> That you, between 26 March 2004 and 28 October 2004 at Bursa Malaysia Securities Berhad, 14th Floor, Exchange Square, Bukit Kewangan, 50250 Kuala Lumpur, abetted Goh Hock Choy (NRIC No. 621010-05-5331) who caused to be created a
H misleading appearance of active trading in Lii Hen Industries Berhad (Company No: 301361-U) shares on a stock market, that is, Bursa Malaysia Securities Berhad, where Goh Hock Choy was indirectly concerned in transactions of sale and purchase of Lii Hen Industries Berhad shares that did not involve any change in the beneficial ownership of the said Lii Hen Industries Berhad
I shares, executed through the central depository securities accounts

> listed in the Appendix to this charge, and the said offence was committed pursuant to your abetment and you have thereby committed an offence under section 84(1) read together with section 122C(c) of the Securities Industry Act 1983 (Act 280), punishable under section 88B of the same Act.

[3] But before trial could commence, the applicant filed a notice of motion (motion) at the High Court to strike out/quash/permanently stay the charge. The main ground for the motion was that the applicant was a 'whistle-blower' who was entitled therefore to the immunity and protection under the Whistleblower Act 2010. On 5 February 2013, the High Court dismissed the motion. The applicant appealed. On 13 September 2013, the Court of Appeal dismissed the appeal. The applicant promptly lodged a notice of appeal against the decision of the Court of Appeal. But on 27 September 2013, the applicant was notified by the registry of this court that the said notice of appeal could not be processed, and which notice of appeal was then returned to the applicant, by reason of s. 87(1) of the Court of Judicature Act 1964 ("CJA"), which provides:

> (1) The Federal Court shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court in its original jurisdiction subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal.

[4] In other words, s. 87(1) of the CJA provides that the Federal Court shall have jurisdiction to hear and determine any appeal from any decision (as defined in s. 3 of the CJA) of the Court of Appeal if the criminal matter were decided (to follow the meaning of 'decision' as defined in s. 3 of the CJA) by the High Court in its original jurisdiction. Otherwise, "... there is no right of appeal to the Federal Court in a criminal matter that originated in the subordinate courts" (*Tan Sri Eric Chia Eng Hock v. PP* [2007] 1 CLJ 565; [2007] 2 MLJ 101 per Augustine Paul FCJ). "This section ... does not provide for appeals in criminal matters originating in the subordinate courts" (*Sia Cheng Soon & Anor v. Tengku Ismail Tengku Ibrahim* [2008] 5 CLJ 201; [2008] 3 MLJ 753 per Zaki Azmi PCA, as he then was). "In a criminal matter which originated from the sessions court, as in this case, the Court of Appeal stands as the apex court. No further appeal shall lie to the Federal Court. The appeal should stop at the Court of Appeal" *Munawar Ahmad Anees v. PP* [2010] 1 CLJ 802; [2010] 3 MLJ 285 per Raus Sharif FCJ, as he then was).

[5] The learned Deputy Public Prosecutor hence submitted that the applicant had no standing to make the application to the Federal Court, as the matter originated from a subordinate court. The other substantive point made by the learned DPP was that the application for leave to file an appeal was "unknown in law" as there was no provision in s. 87(1) for the grant of leave to appeal in a criminal matter.

[6] Learned counsel for the applicant argued that the motion was first considered by the High Court who could not therefore have exercised appellate or revisionary jurisdiction, and that the motion could only be heard by the High Court, as only the High Court had the inherent jurisdiction to hear and dispose the motion. To support the argument that only the High Court could decide on the motion and that the High Court exercised original jurisdiction, learned counsel for the applicant referred to (i) *Karpal Singh Ram Singh v. PP* [2012] 5 CLJ 537, where it was held by the Federal Court per Suriyadi FCJ, delivering the judgment of the court, that "original jurisdiction generally means that the High Court considered the matter in the first instance as opposed to its appellate jurisdiction over a matter heard in the first instance by a court below", (ii) *PP v. Lee Tin Bau* [1984] 1 LNS 56; [1985] 1 MLJ 388, 194, where it was held by Gunn Chit Tuan J, as he then was, that a court has the power to intervene where there is evidence that there is *mala fide* on the part of the prosecution which amount to an abuse of the process of court and is oppressive and vexatious, and (iii) *Karpal Singh & Anor v. PP* [1991] 2 CLJ 1458; [1991] 1 CLJ (Rep) 183; [1991] 2 MLJ 544 at 548, 549 where it was held by the former Supreme Court per Abdul Hamid Omar LP, delivering the judgment of the court, that:

> there is no provision in the Code for striking out proceedings or acquittal without hearing all evidence the prosecution has the capacity to offer, even though postponements are needed. If any party feels that the charge and consequent proceedings are illegal on the face of the record, which we feel is rare, his remedy is to take up appropriate proceedings before a High Court to quash the charge and the whole proceedings producing evidence to the satisfaction of the trial judge to adopt such a case. *It is absurd and against common sense to believe that the legislature ever expected members of subordinate judiciary to exercise such vast powers, trespassing into the public prosecutor's area … our considered opinion is that the English doctrine of inherent jurisdiction is hardly applicable in the subordinate*

courts but the High Court may invoke such prerogative powers in rare instances where it is right to do justice to the accused. (emphasis added)

[7] Indeed, *Karpal Singh & Anor v. PP* [1991] and *Datuk Yong Teck Lee v. PP* [1996] 2 MLJ 68 as well "are authorities for the general proposition that the subordinate courts do not have inherent jurisdiction" (*Wong Kim Woon v. PP* [1999] 2 CLJ 205; [1999] 5 MLJ 114 per Abdul Wahab J, as he then was) to quash a charge or to acquit an accused on the charges preferred without hearing the evidence in support. Hence, procedure-wise, the motion to strike out/quash/permanently stay the charge was rightly instituted at the High Court who heard the motion at first instance. Since it was heard and disposed at first instance by the High Court, then it should only follow that the motion could not have been decided by the High Court in its appellate or revisionary jurisdiction. But would it also follow that since the motion could not have been decided by the High Court in its appellate and or revisionary jurisdiction, that the motion could only have been decided by the High Court in its original jurisdiction, as contended by the applicant? Perhaps, that would follow if it is provided that jurisdiction is original if it is not appellate and or revisionary. But with respect, the original jurisdiction of the High Court is not whatever that is not appellate and/or revisionary. The original jurisdiction of the High Court is not vague. Rather, the original jurisdiction of the High Court is stipulated with exactitude in ss. 22 to 25 of the Courts of Judicature Act 1964 (CJA) (see *Tan Sri Eric Chia Eng Hock v. PP* where Richard Malanjum CJ (Sabah & Sarawak) observed that ss. 22 to 25 of the CJA stipulate what are the original jurisdictions of the High Court).

[8] Section 22 of the CJA stipulates:

(1) The High Court shall have jurisdiction to try:

(a) all offences committed:

(i) within its local jurisdiction;

(ii) on the high seas on board any ship or on any aircraft registered in Malaysia;

(iii) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;

A (iv) by any person on the high seas where the offence is piracy by the law of nations; and

(b) offences under Chapters VI and VI A of the Penal Code, and under any of the written laws specified in the Schedule to the Extra-Territorial Offences Act 1976, or offences under B any other written law the commission of which is certified by the Attorney General to affect the security of Malaysia committed, as the case may be:

(i) on the high seas on board any ship or on any aircraft registered in Malaysia; C

(ii) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;

(iii) by any citizen or any permanent resident in any place without and beyond the limits of Malaysia; D

(iv) by any person against a citizen of Malaysia;

(v) by any person against property belonging to the Government of Malaysia or the Government of any State in Malaysia located outside Malaysia, including diplomatic E or consular premises of Malaysia;

(vi) by any person to compel the Government of Malaysia or the Government of any State in Malaysia to do or refrain from doing any act;

F (vii) by any stateless person who has his habitual residence in Malaysia;

(viii) by any person against or on board a fixed platform while it is located on the continental shelf of Malaysia; or

G (ix) by any person who after the commission of the offence is present in Malaysia.

(2) The High Court may pass any sentence allowed by law.

H **[9]** When the CJA was passed in 1964, s. 22 was enacted to provide for the original criminal jurisdiction of the High Court (see *Munusamy v. Subramaniam & Ors* [1969] 1 LNS 112; [1969] 2 MLJ 108, where Abdul Hamid Omar J, as he then was, imparted the following history of s. 22:

I In 1946, under the Malayan Union Government, the Courts Ordinance, 1946 was enacted establishing the constitution and powers of the civil and criminal courts with substantially the same

powers as were formerly exercised in the territories included in the Malayan Union. With the establishment of a Federation under the 1948 Federation of Malaya Agreement, the Courts Ordinance, 1948 was passed which consolidated the law relating to the constitution and powers of the civil and criminal courts throughout the Federation. The Unfederated Malay States Courts Enactments, including the FMS Courts Enactment (Cap 2), were repealed. Under s. 47 of the Courts Ordinance, 1948, the original civil jurisdiction of the High Court was substantially the same as that provided under FMS Courts Enactment (Cap 2). In 1964, however, the Courts of Judicature Act was passed. *Provision for the original criminal jurisdiction (s. 22), original civil jurisdiction (s. 23) and other powers of the High Court (s. 25) was made*".) (emphasis added).

[10] That s. 22 of the CJA is the embodiment of the original criminal jurisdiction of the High Court was also said in *Tengku Abdul Muiz Shah & Ors v. PP* [1982] 1 LNS 91; [1983] 1 MLJ 422 per Mohamed Dzaiddin J, as he then was:

Except for certain Articles in the Constitution (See Articles 121, 122A, 122B, 122C; 123; 126), the powers and jurisdiction of the High Court are governed by the Courts of Judicature Act 1964. In the sphere of criminal jurisdiction, the High Court has three jurisdictions, namely, original, appellate and revisionary. With regard to its original jurisdiction, section 22(1)(a)(i) of the Act states that the High Court shall have jurisdiction to try all offences committed within its local jurisdiction. Under section 3 of the Act, local jurisdiction means "in the case of the High Court in Malaya, the territory comprised in the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu".

[11] The former Supreme Court per Salleh Abas LP, delivering the judgment of the court, in *Dato' Mohamed Hashim Shamsuddin v. The Attorney-General, Hong Kong* [1986] 1 CLJ 377; [1986] CLJ (Rep) 89; [1986] 2 MLJ 112 also affirmed that s. 22 of the CJA relates to the original criminal jurisdiction of the High Court:

In the sphere of criminal jurisdiction, the High Court has three jurisdictions, namely, original, appellate and revisionary. With regard to its original jurisdiction, section 22(1)(a)(i) of the Act states that the High Court shall have jurisdiction to try all offences committed within its local jurisdiction.

[12] There could not be any question about it. The original criminal jurisdiction of the High Court is as stipulated in s. 22 of the CJA. And when interpolated, 'section 22 of the CJA' in place of 'in its original jurisdiction', s. 87(1) of CJA reads:

> (1) The Federal Court shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court [in pursuance of section 22] subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal.

[13] In effect, s. 87(1) of the CJA provides that the Federal Court "shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court" in pursuance of s. 22. That s. 87(1) must be read as a whole. For the Federal Court to have jurisdiction to hear and determine an appeal from any decision of the Court of Appeal, two preconditions must be met: (i) the decision of the Court of Appeal was in its appellate jurisdiction in respect of the criminal matter, and, (ii) the criminal matter was decided by the High Court in its original jurisdiction. As said, the original criminal jurisdiction of the High Court is as stipulated in s. 22 of the CJA, which is the jurisdiction to try offences. But in the instant case, the High Court was not the trial court. And not being the trial court, the High Court could not have decided the criminal matter in pursuance of s. 22 or in other words, in its original criminal jurisdiction. This is to say that an appeal could only reach the Federal Court *via* the Court of Appeal, if the criminal matter were decided by the High Court as the trial court. The same conclusion was reached by courts in Singapore with respect to the corresponding sections of the Supreme Court of Judicature Act, wherein ss. 15 and 29A(2) read:

> Section 15
>
> (1) The High Court shall have jurisdiction to try all offences committed:
>
> (a) within Singapore;
>
> (b) on board any ship or aircraft registered in Singapore;
>
> (c) by any person who is a citizen of Singapore on the high seas or on any aircraft;

(d) by any person on the high seas where the offence is piracy by the law of nations; A

(e) by any person within or outside Singapore where the offence is punishable under and by virtue of the provisions of the Hijacking of Aircraft and Protection of Aircraft and International Airports Act (Cap. 124) or the Maritime Offences Act (Cap. 170B); and B

(f) in any place or by any person if it is provided in any written law that the offence is triable in Singapore.

(2) The High Court may pass any sentence allowed by law. C

Section 29A(2)

The criminal jurisdiction of the Court of Appeal shall consist of appeals against any decision made by the High Court in the exercise of its original criminal jurisdiction, subject nevertheless to the provisions of this Act or any other written law regulating the terms and conditions upon which such appeals may be brought. D

[14] In *Ang Cheng Hai & ors v. PP* [1995] 3 SLR 201, the appellants were charged in the subordinate courts for an offence under the Undesirable Publications Act. The appellants applied under s. 185 of the Criminal Procedure Code for the proceedings to be transferred and tried in the High Court. The High Court dismissed the motions. The appellants appealed. The question was whether they had a right of appeal. Counsel for the appellants submitted that the High Court was acting in the exercise of its original criminal jurisdiction in hearing the application pursuant to s. 185 of the CPC, and that accordingly, the Court of Appeal had jurisdiction to hear the appeal, having regard to s. 29A(2) of the Supreme Court of Judicature Act (Cap 322) (SCJA). The prosecution contended that the Court of Appeal was only empowered to hear appeals in criminal cases against orders of finality, that the High Court was not exercising its trial jurisdiction, and thus no right of appeal lay to the Court of Appeal. E F G

[15] On whether the High Court had exercised its original jurisdiction, Karthigesu JA, delivering the judgment of the court, first held that s. 15 of the SCJA specifies the original criminal jurisdiction of the High Court: H

The CPC is silent as to any question of appeal against a decision of the High Court made under s. 185 CPC. The appellants' only recourse was to attempt to bring themselves within the ambit of s. 29A(2) SCJA, which they sought to do. I

A It may be helpful to set out first the various heads of criminal jurisdiction which the SCJA confers on the High Court. Section 3(a) SCJA provides that the High Court shall exercise original and appellate criminal jurisdiction. Section 15 and s. 19 SCJA specify the scope of the High Court's original criminal trial jurisdiction and appellate criminal jurisdiction respectively. Finally, s. 27 SCJA
B clothes the High Court with general supervisory and revisionary jurisdiction over all subordinate courts.

[16] His Lordship then expounded on the original jurisdiction of the High Court, the exercise of trial jurisdiction and the right of
C appeal under the SCJA:

> The concept of 'original jurisdiction' has been defined to mean 'jurisdiction to consider a case in the first instance ... to take cognizance of a cause at its inception, try it and pass judgment upon the law and facts': *Black's Law Dictionary* (6th edn.). In
D *Wong Hong Toy & Anor v. PP* [1986] 2 MLJ 336 (CCA); [1986] 1 MLJ 453 (HC), the Court of Criminal Appeal observed (at p 457):
>
> > The all-embracing original criminal jurisdiction of the High
> E Court under s. 15 of the (Supreme Court of Judicature) Act is not in all cases exercised by the High Court but the administration of criminal justice in respect of what we may call the less serious criminal cases, generally those cases not involving the sentence of death or life imprisonment, is entrusted to the subordinate courts. The exercise of the
> F original criminal jurisdiction of the High Court involves generally the more serious criminal cases or such less serious criminal cases as may be transferred from the subordinate courts to the High Court.
>
> It is implicit from the above *dicta* that 'original jurisdiction' refers
> G to original trial jurisdiction. In respect of the High Court, its original criminal jurisdiction is enumerated under s. 15 SCJA, which denotes its trial jurisdiction. For this reason, the *dictum* of Coomaraswamy J did not assist the appellants. In the present cases, as the prosecution rightly pointed out, there was no trial
> H which had commenced in the High Court. The High Court had not yet taken cognizance of the offences in question. The only matters before the High Court were the applications under s. 185 CPC. We recognised that both the Magistrate's Court and the High Court may have been jurisdictionally competent to try the offences in question. Nevertheless, the proceedings had been
> I validly commenced in a Magistrate's Court, which had properly taken cognizance of the offences and had proceeded to exercise original criminal jurisdiction.

> We turned to consider the prosecution's submissions. Sections 29A(2) and 44 SCJA are the key provisions relating to the criminal jurisdiction of the Court of Appeal. While s. 44(1) of the pre-existing SCJA may have been deleted and recast as s. 29A(2) SCJA, the remaining sub-ss. (2) to (5) in s. 44 have been retained without any amendment. This clearly indicates that the reasoning and conclusion of the Court of Appeal in *Mohamed Razip bin Fadzillah v. PP* [1988] 1 MLJ 84 remain applicable. Accordingly, we agreed with the prosecution's submission that the Court of Appeal is generally empowered only to entertain appeals which are concerned with orders of finality, i.e. those resulting in conviction and sentence or acquittal. On this premise, Rubin J's decision did not give rise to a right of appeal.

[17] *Ang Cheng Hai* was followed in *Microsoft Corporation v. SM Summit Holdings* [2000] 2 SLR 137, where it was similarly held by the Court of Appeal per LP Thean JA, delivering the judgment of the court, that the words 'original criminal jurisdiction' in s. 29A(2) of the SCJA refer to 'trial jurisdiction':

> Following these decisions, we are of the opinion, the words 'original criminal jurisdiction' in s. 29A(2) of the SCJA, on the true construction, refer to 'trial jurisdiction' and the decision of the learned Chief Justice in refusing to release or vary the implied undertaking was not an order made in exercise of the original criminal jurisdiction of the High Court within the meaning of s 29A(2) of the SCJA. Therefore, no appeal lies from that order and this court has no jurisdiction to hear these appeals.

[18] In *Ng Chye Huey v. PP* [2007] 2 SLR 106, Andrew Phang JA, delivering the judgment of the court, thus evaluated and agreed with *Ang Cheng Hai*:

> According to the Singapore Court of Appeal decision of *Ang Cheng Hai v. PP* [1995] 3 SLR 201 at 205, [18], the scope of the High Court's 'trial' – and therefore its 'original criminal' – jurisdiction is set out in s. 15 of the SCJA. Sections 15(1) and 15(2) of the SCJA variously provide that the High Court is to have jurisdiction to 'try offences' and 'pass sentence allowed by law. These provisions make it clear beyond all doubt that Choo J's decision did not fall within the ambit of the High Court's "original criminal jurisdiction" under s. 29A(2) of the SCJA. The original criminal jurisdiction to 'try' and 'sentence' the applicants was, in the present case, being exercised by the subordinate court instead.

A **[19]** And in *Bachoo Mohan Singh v. PP* [2010] 1 SLR 966, V K Rajah JA, delivering the judgment of the court, pronounced "... it is clear that the phrase 'original criminal jurisdiction' (in s. 29A(2) of the SCJA) refers to the trial jurisdiction of the High Court".

B **[20]** The words of a statute are to be construed, *noscitur a sociis*, in the light of their context. 'Original jurisdiction' is clearly not 'jurisdiction first exercised'. Under the CJA, 'original criminal jurisdiction' is the jurisdiction to try offences, with s. 30 of the CJA as the exception. The key words in s. 22(1) of the CJA are C "jurisdiction to try". In the instant case, that jurisdiction to try the offence was entrusted to the Sessions Court. Since the High Court was not the trial court trying the offence and there was no provision to permit an appeal of a criminal matter that emanated from a subordinate court to the Federal Court, this application for D leave to appeal, beside being unknown in law and so could not, nay never, be granted in any event, was an absolute non-starter.

[21] For the latter reasons, the application was unanimously dismissed.

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